In the High Court of Uttaranchal at Nainital.

A.O. No. 221/2004

The Oriental Insurance Company Ltd.
through its Divisional Manager,
Nainital road, Bhotia Parao,
Haldwani (Nainital) ..Appellant.

Vs.

Smt. Radha Devi and 8 others .. Respondents.

Sri T.A. Khan, learned counsel for the appellant.
Sri B.S. Negi, and Sri Tribhuwan Singh learned counsel for the respondents.

Date: 18-8-2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been filed by the appellant The Oriental Insurance Company, against the award made by the Motor Accident Claim Tribunal, Uttarkashi, in Motor Accident Claim Tribunal Case No. 17/2003, whereby the claimants-respondents were awarded a compensation of Rs. 6,16,000/- along with 6% interest from the date of filing of the claim petition.

2- Brief facts giving rise to this appeal are that on 14.5.2003 Liber Lal, deceased was going to Dehradun and at Naugaon he boarded the vehicle utility No. U.A. 07-9439 at about 4 p.m. The driver of the vehicle was driving the vehicle rashly and negligently and when it reached in between Saarigaad and Chami motor road it fell down in the ditch and the deceased received injuries and he died at the spot. Age of the deceased was 32 years at the time of his death and he was a carpenter by profession.

3- Undisputedly the vehicle was a goods-carrier and ground taken in the appeal is that in a goods-carrier vehicle passengers were not allowed to travel and only driver, employee and the owner were entitled for compensation on the event of accident. The deceased was a gratuitous passenger, therefore, no compensation could be paid. The learned counsel for the appellant relied on the Apex Court's judgment in the matter of National Insurance Company Ltd. Vs. Baljit Kaur and

others; (2004) 2 S.C.C., page 1, to submit that the tribunal did not record any finding as to whether the deceased was covered under the insurance policy , which were the terms of the contract between the insured and the insurer and whether any premium was paid or not. He submitted that since clause (b) (i) was inserted to section 147 of the Motor Vehicles Act, 1988 in 1994 therefore insurance made after 1994, owner of the goods is insured by the insurance company. Since the policy under which liability of payment of compensation was to be determined has covered the owner of the goods/passenger, therefore the tribunal fell in to error in fastening the liability on the insurance company.

4- The Apex Court in the case of National Insurance Company Vs. Baljit Kaur (supra) was dealing with the payment of compensation to the gratuitous passengers. Here the deceased was permitted by the driver of the vehicle to board the vehicle and respondent has not denied this fact. However the tribunal has not recorded any finding as to whether the deceased was a gratuitous passenger and was covered under the insurance policy or not and the liability of the insurer or the insured.

5- The Apex Court in the case of National Insurance Co. Ltd. Vs. Baljit Kaur (supra) in para -21 directed the insurance company to satisfy the award amount in favour of the claimant if already not satisfied and receive the same from the owner of the vehicle. Para-21 of the aforesaid judgment is reproduced as under:-

"The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it

may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

6- In view of the aforesaid directions of the Supreme Court, under Article 142 of the Constitution of India, to meet the ends of justice the Insurance Company was directed to satisfy the award. Therefore, in the same terms we direct that the Insurance Company shall satisfy the award and shall recover the amount of the award from the insured, if the liability of the insured is fixed by the executing court i.e. Motor Accident Claims Tribunal.

7- For the aforesaid reasons, the appeal is disposed of accordingly subject to the directions aforementioned.

8- The amount of compensation, if deposited here, shall be transmitted to the concerned Motor Accident Claims Tribunal.

(B.S. Verma, J.) (P.C. Verma, J.)

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